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EXAMINER

LIEU, JULIE BICHNGOC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WERNER ZAGLER

Appeal 2007-0840
Application 09/803,360
Technology Center 3600

Decided: January 31, 2008

Before JAMES D. THOMAS, LANCE LEONARD BARRY,
and MAHSHID D. SAADAT, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1 through 9. We have jurisdiction under 35 U.S.C. §§ 6(b) and 134(a). An Oral Hearing on this appeal was conducted on January 23, 2008.

As best representative of the disclosed and claimed invention,
independent claim 1 is reproduced below:

1. A method of facilitating entry into or out of a motor vehicle, the method comprising the acts of:

providing a double unlock door command;

simultaneously or subsequently opening a vehicle door; and

completely lowering a window of the vehicle door as soon as both the double unlock command and the simultaneous or subsequent opening of the vehicle door occurs, without requiring any further action by a user.

The following reference is relied on by the Examiner:

Boehm¹ DE 42 03 512 C1 May 19, 1993

Claims 1 through 9 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the Examiner relies upon Boehm alone.

Rather than repeat the positions of the Appellant and the Examiner, reference is made to the Brief and Reply Brief for the Appellant's positions, and to the Answer for the Examiner's positions.

OPINION

For the reasons generally set forth by the Examiner in the Answer, as embellished upon here, we sustain the rejection of all claims on appeal under 35 U.S.C. § 103. In accordance with the positions taken by Appellant at page 4 of the principal Brief on appeal, independent claim 1 is considered representative of the subject matter of independent claims 1, 5, and 9, which

¹ Our understanding of this reference is based upon a translation of record in this application on which we rely and refer.

are all grouped together. Similarly, dependent claims 2 through 4 and 6 through 8 are grouped with these independent claims and no arguments are presented in the Brief as to these dependent claims.

This application was subject to a prior appeal decided on January 20, 2005 and represented as appeal number 2004-1328. We incorporate herein by reference the subject matter and discussion from this decision of the prior appeal.

Our decision in the prior appeal discussed at pages 3 and 4 a feature not present in the Boehm patent and not argued in this appeal but which again has significance in this appeal. This feature relates to the double unlock command. The Examiner's reasoning as to this feature at page 4 of the present Answer in this appeal is consistent with our reasoning set forth at pages 3 and 4 of our prior decision and slightly embellishes upon it. Taken together with the reasoning at pages 3 and 4 of our prior decision as well as the Examiner's reasoning at page 4 of the Answer, it is well settled that the feature is known to exist in the art.

The features recited at the last clause in the body of claim 1 as reproduced earlier in this opinion are the subject of the arguments presented in the Brief beginning at page 4. Emphasis is upon the belief by Appellant that Boehm does not lower the window "as soon as" a double unlock command and the opening of the vehicle door occur "without requiring any further action by a user." The quoted language was added to the version of claim 1 presented in this appeal to allegedly distinguish and make patentable the subject matter of claim 1 as it was presented in the prior decision. We strongly disagree with this view.

It appears to us that the principal argument in this appeal essentially boils down to the same argument presented to us in the previous appeal which we addressed at pages 4 and 5 of our prior decision. We reproduce the pertinent paragraphs here for emphasis.

The principal argument in the brief and reply brief of appellant is that the reference does not lower the vehicle window until a separate and additional action by the operator occurs after the door is opened. It is further explained at page 4 of the principal brief on appeal that this separate and additional action requires the user to actuate the door handle for a specified period of time. This is consistent with the teachings of the operation of Figure 2 at translation page 10 and as depicted by the English translation version of the Figure 2 of this reference that was attached to the brief. Nevertheless, there is no negative limitation in the claims that distinguishes over the operation and functionality of the reference to the extent of not requiring the door handle to be actuated for less than one second or any amount of time for that matter. There is no specified time limit in each of the independent claims 1, 5 and 9 on appeal. The reference as relied on and explained by the examiner merely teaches more than what is required of the independent claims on appeal. Finally, the claims are opened by the use of the term “comprising.”

With respect to the arguments at page 6 of the principal brief on appeal, we note that simultaneity is only an alternative requirement of representative claim 1 on appeal as explained earlier in this opinion. Certainly a one-second operation time requirement of operating the door handle of the reference for at least one second in time is subsequent to or substantially simultaneous within the context of the recited subject matter of the independent claims 1, 5 and 9 on appeal.

As the Brief here indicates, figure 2 of Boehm is the principal figure pertinent to the present claims on appeal, the discussion at which begins at the bottom of page 10 through the bulk of page 11 of the translation. These portions of Boehm make clear that once the unlocking mechanism in that reference is operated upon or otherwise actuated, the complete lowering of the window occurs. For purposes of our analysis here, we emphasize again a statement we made at the middle of the page 4 of our prior decision that the Appellant's Specification pages 1 and 2 and the Summary of the Invention at page 2 of the Brief in the prior appeal both indicate that it was in the prior art that a complete lowering of a door window took place by a single operation of a double unlock command alone.

We therefore generally agree with the Examiner's observations at page 6 of the Answer as set forth in the Response to Argument portion thereof as we have reproduced here:

It is submitted that the vehicle window in Boehm lowers as soon as the two actions occur without requiring any further action by a user. That is to say, when the door opening command is received and the door is opened the window is lowered while no "further" action by a user is required other than the action of opening the door, which is also the case in the present invention.

It is true that Boehm requires the user to hold the door handle at an open state for the set time period of more than 1 second. However, as for the door of the present invention to be opened, i.e. door handle is actuated, and for the door open switch signal to be received by the controller to indicate that the door handle switch has come to an opened position, as described in the specification paragraphs [0015] and [0019], it would definitely take some time which is greater than 0 second;

thus, “as soon as” is interpreted as to be some time period and this time period could take up more than 1 second. It is not clearly disclosed in the specification and/or recited in the claims how much the time elapse “as soon as” is, it is presumed that it could be half a second, one second, or a second and a half, which is about the same time it takes for the event to take place as in Boehm’s. Thus, Boehm’s one second is interpreted as “as soon as”.

To the extent the Appellant reproduces at page 6 of the principal Brief on appeal a portion of the subject matter from our prior decision at page 4 thereof, there is an incomplete statement of our remarks with respect to a negative limitation. In the context of the discussion so far in this appeal, it is easy to understand that a negative limitation was absent in the claims on appeal in the prior appeal even though such a negative limitation has been added in the claims in this appeal. Because Appellant incompletely quoted in the Brief in this appeal what we said with respect to negative limitations in our prior opinion, the context has been lost. Even so, the present claims do not distinguish over the time-sense functionality of Boehm because the claims do not recite any time period at all, much less a time period of one second or less.

The substantially simultaneous operation of Boehm was also discussed from the above-reproduced (second paragraph) material at the top of page 5 of our original opinion. We therefore agree with the Examiner’s observation in essence that a single act is set forth in the reference and that a user operating an actuator in Boehm for any continuous length of time does not equal a second, separate action by a user to the extent this is recited at the end of the present version of claim 1 on appeal. The reference still

teaches one user action or act. We do not agree with the view expressed at pages 4 and 5 of the principal Brief that merely holding a door handle open for a set period of time as it is done in branch 13 of Boehm's figure 2 amounts to a separate action, thus excluding Boehm's teaching because of the negative limitation at the end of representative claim 1 on appeal. Likewise, we agree with the Examiner's "as soon as" rationale. As the examiner has indicated, the present specification offers no guidance as to the scope of meaning or scope of time of "as soon as." The artisan would well appreciate that the normal operation of Boehm's system would include instances in which the user's actuation of the unlocking command may occur for more than one second. This does not amount to teaching away from the claimed operation to the extent argued at page 7 of the principal Brief.

Moreover, the negative limitation comment that we made at pages 4 and 5 of our original opinion indicates the time has not been specified in the independent claims 1, 5, and 9 on appeal in the prior decision and none has been so expressed in the present version of claim here. Rather than Boehm teaching away or otherwise discouraging the artisan from following the path set out in the reference or even leading the artisan in a direction divergent from the path that was taken by the Appellant here, the present version of the independent claims on appeal continue not to distinguish over the teachings and suggestions of Boehm and the admitted prior art in a patentable manner.

Appellant's several references to the right-hand path 12 in figure 2 of Boehm in the Brief and Reply Brief are misplaced. In branch 12 of figure 2 it is clear that the window is not opened at all, this making it inapposite to the subject matter of the claims on appeal which require the opening of the

window completely. As indicated earlier, it is only branch 13, the left hand portions of Boehm's figure 2, which relates to the present claims on appeal because it indicates the complete lowering of the window occurs.

In response to the arguments presented at page 2 of the Reply Brief and to repeat in slightly different fashion the reasoning we have set forth earlier, arguably extending a length of time of a given, taught act/action in Boehm is not considered an "additional action" or "any further action by a user" as argued/claimed. It is the same user's act/action. No separate, further act of the user is required in Boehm so that the limitation "without requiring any further action by a user" is met. In its simplest form, Boehm teaches only one continuous act/action by a user. No matter how long the user in Boehm performs the act of opening the door, it is part of the same act/action. In these respects then Boehm is consistent with the admitted prior art as well.

In view of the foregoing, the decision of the Examiner rejecting claims 1 through 9 on appeal under 35 U.S.C. § 103 is Affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. §1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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